

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEROME CEASAR ALVERTO,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,
BARBARA J GRONSETH, DENISE
LARSON, RON FRAKER, STATE OF
WASHINGTON,

Defendants.

No. C12-5518 BHS/KLS

ORDER TO AMEND OR SHOW CAUSE

This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1), Local Rules MJR 3 and 4. Plaintiff has been granted leave to proceed *in forma pauperis*. Presently before the Court for review is Plaintiff's proposed Prisoner Civil Rights Complaint. ECF No. 8. The Court will not direct service of Plaintiff's complaint at this time because it is deficient, as is explained in further detail below. Plaintiff will be given an opportunity to amend his complaint.

DISCUSSION

Under the Prison Litigation Reform Act of 1995, the Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a

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1 defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); See
2 *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

3 A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v.*
4 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.
5 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
7 490 U.S. at 327. A complaint or portion thereof, will be dismissed for failure to state a claim
8 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right
9 to relief above the speculative level, on the assumption that all the allegations in the complaint
10 are true.” See *Bell Atlantic, Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) (citations omitted).
11 In other words, failure to present enough facts to state a claim for relief that is plausible on the
12 face of the complaint will subject that complaint to dismissal. *Id.* at 1974.

13 Although complaints are to be liberally construed in a plaintiff’s favor, conclusory
14 allegations of the law, unsupported conclusions, and unwarranted inferences need not be
15 accepted as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Neither can the court supply
16 essential facts that an inmate has failed to plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v. Board of*
17 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). Unless it is absolutely clear that
18 amendment would be futile, however, a pro se litigant must be given the opportunity to amend
19 his complaint to correct any deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).
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21 Plaintiff Jerome Ceasar Alverto is currently incarcerated at the Clallam Bay Corrections
22 Center (CBCC). He purports to sue various employees of the CBCC, including Barbara
23 Gronseth, an administrative assistant and law librarian, Denise Larson, a legal liaison, law
24 librarian supervisor and grievance coordinator, and Ron Fraker, the superintendent of CBCC.
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1 Plaintiff alleges that on October 21, 2010, he and another offender were in the law library
2 discussing legal matters in Spanish when Barbara Gronseth “immediately accosted the Plaintiff
3 and offender stating, ‘You two stop speaking Spanish in here; you need to speak English!’” ECF
4 No. 8, at 3. Plaintiff alleges that Defendant Gronseth’s demeanor was “mean, evil and hate
5 filled.” *Id.* Plaintiff also alleges that his actions were not in violation of library policy and did
6 not threaten CBCC security and that Defendant Gronseth’s actions were contrary to DOC policy,
7 Washington state law, and his First Amendment right to freedom of speech. *Id.*, at 4.

9 Plaintiff further alleges that Denise Larson and Ron Fraker failed to properly train,
10 discipline and/or supervise Barbara Gronseth. *Id.*, at 5.

11 The Court cannot infer from the vague and conclusory statements contained in Plaintiff’s
12 complaint that any of the named defendants have violated his constitutional rights.

13 Allegations of verbal harassment and abuse fail to state a claim cognizable under 42
14 U.S.C. § 1983. *See Freeman v. Arpaio*, 125 F.3d 732, 738 (9th Cir. 1997); *Rutledge v. Arizona*
15 *Bd. Of Regents*, 660 F.2d 1345, 1353 (9th Cir. 1981), *aff’d sub nom. Kush v. Rutledge*, 460 U.S.
16 719 (1983); *see, e.g., Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996), *amended* 135 F.3d
17 1318 (9th Cir. 1998) (disrespectful and assaultive comments by prison guard not enough to
18 implicate 8th Amendment); *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987) (directing
19 vulgar language at prisoner does not state constitutional claim); *Burton v. Livingston*, 791 F.2d
20 87, 99 (8th Cir. 1986) (“mere words, without more, do not invade a federally protected right”);
21 *Ellingburg v. Lucas*, 518 F.2d 1196, 1197 (8th Cir. 1975) (prisoner does not have cause of action
22 under § 1983 for being called obscene name by prison employee); *Batton v. North Carolina*, 501
23 F.Supp. 1173, 1180 (E.D.N.C. 1980) (mere verbal abuse by prison officials does not state claim
24 under § 1983). This is so even if the verbal harassment is racially motivated. *See Hoptowit v.*
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1 *Ray*, 682 F.2d 1237, 1252 (9th Cir. 1982) (federal court cannot order guards to refrain from using
2 racial slurs to harass prisoners); *Burton*, 791 F.2d at 101 n.1 (use of racial slurs in prison does not
3 offend Constitution).

4 Thus Plaintiff's allegation that Barbara Gronseth told him to stop speaking Spanish does
5 not state a cause of action under Section 1983.

6 Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff
7 may file an amended complaint curing, if possible, the above noted deficiencies, or show cause
8 explaining why this matter should not be dismissed no later than **August 20, 2012**. If Plaintiff
9 chooses to amend his complaint, he must demonstrate how the conditions complained of have
10 resulted in a deprivation of his constitutional rights. The complaint must allege in specific terms
11 how each named defendant is involved. The amended complaint must set forth all of Plaintiff's
12 factual claims, causes of action, and claims for relief. Plaintiff shall set forth his factual
13 allegations **in separately numbered paragraphs** and shall allege with specificity the following:
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15 (1) the names of the persons who caused or personally participated in causing the
16 alleged deprivation of his constitutional rights;

17 (2) the dates on which the conduct of each Defendant allegedly took place; and

18 (3) the specific conduct or action Plaintiff alleges is unconstitutional.
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20 An amended complaint operates as a complete substitute for (rather than a mere
21 supplement to) the present complaint. In other words, an amended complaint supersedes the
22 original in its entirety, making the original as if it never existed. Therefore, reference to a prior
23 pleading or another document is unacceptable – once Plaintiff files an amended complaint, the
24 original pleading or pleadings will no longer serve any function in this case. *See Loux v. Rhay*,
25 375 F.2d 55, 57 (9th Cir. 1967) (as a general rule, an amended complaint supersedes the prior
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1 complaint). Therefore, in an amended complaint, as in an original complaint, each claim and the
2 involvement of each defendant must be sufficiently alleged.

3 Plaintiff shall present his complaint on the form provided by the Court. The amended
4 complaint must be **legibly rewritten or retyped in its entirety**, it should be an original and not a
5 copy, it may not incorporate any part of the original complaint by reference, and it must be
6 clearly labeled the “Amended Complaint” and must contain the same cause number as this case.
7 Plaintiff should complete all sections of the court’s form. Plaintiff may attach continuation
8 pages as needed but may not attach a separate document that purports to be his amended
9 complaint. **Plaintiff is advised that he should make a short and plain statement of claims**
10 **against the defendants. He may do so by listing his complaints in separately numbered**
11 **paragraphs. He should include facts explaining how each defendant was involved in the**
12 **denial of his rights.**

14 The Court will screen the amended complaint to determine whether it contains factual
15 allegations linking each defendant to the alleged violations of Plaintiff's rights. The Court will
16 not authorize service of the amended complaint on any Defendant who is not specifically linked
17 to the violation of Plaintiff's rights.

19 If Plaintiff decides to file an amended civil rights complaint in this action, he is cautioned
20 that if the amended complaint is not timely filed or if he fails to adequately address the issues
21 raised herein on or before **August 20, 2012**, the Court will recommend dismissal of this action as
22 frivolous pursuant to 28 U.S.C. § 1915 and the dismissal will count as a “strike” under 28 U.S.C.
23 § 1915(g). Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three
24 or more civil actions or appeals which are dismissed on grounds they are legally frivolous,
25 malicious, or fail to state a claim, will be precluded from bringing any other civil action or
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1 appeal in forma pauperis “unless the prisoner is under imminent danger of serious physical
2 injury.” 28 U.S.C. § 1915(g).

3 **The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C.**
4 **1983 civil rights complaint and for service. The Clerk is further directed to send a copy of**
5 **this Order and a copy of the General Order to Plaintiff.**

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8 **DATED** this 23rd day of July, 2012.

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11 Karen L. Strombom
12 United States Magistrate Judge
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